IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6034 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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MANUBHAI N DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6034 of 2001

MR NITIN M AMIN for Petitioner No. 1

MR AD OZA, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/09/2001

ORAL JUDGEMENT

1. Rule. Mr. A.D. Oza, learned Public Prosecutor, waives service on behalf of the State.

2. The applicant herein has applied for anticipatory bail apprehending arrest in connection with a First Information Report lodged vide C.R. No.41 of 2001 with Maninagar Police Station on the 5th February, 2001, in respect of collapse of a building in earthquake on the 26th January, 2001.

3. The case, in brief, against the applicant is that the applicant, as an architect engineer who had prepared plans and designs, was supposed to supervise the construction and ensure that it is as per required standards. The construction in question was a building named as 'Shri Sadan Apartments' situate in Maninagar area. According to the prosecution case, the construction was not upto the mark, as a result of which it could not stand the quake and collapsed partially. In the collapse, one person lost his life and three persons injured.

4. The case of the applicant is, undisputedly, he was consulting architect engineer for the construction in question, but the builder was one Ramanlal Ranchhodlal Panchal of Mahakali Builders. The applicant has nothing to do with the construction. The construction was made by the said Ramanlal Panchal. The duty of the applicant was over no sooner he prepared the plans, as instructed by Ramanlal Panchal. The applicant's case further is that the applicant was busy rendering services in the quake affected area. There is no notice given to him and, therefore, the warrant under Section 70 has wrongly been obtained. It is contended on behalf of the applicant that even statement of the applicant's daughter-in-law, Urjaben, indicates that he was busy rendering services in the quake affected area in Kutch region. It is contended that the applicant is a qualified architect engineer. He is not likely to flee from justice and, therefore, he be admitted to anticipatory bail. It was contended by Mr. Amin that unlike in other cases, in the present case, even Building Use Permission was obtained in 1989. The building has suffered only partial damage. Remaining part of the building has stood the test and the application, therefore, may be entertained.

5. The application is opposed to by the learned Public Prosecutor. Attention of this Court is drawn to the statement of Urjaben, daughter-in-law of the applicant, who is not able to give the exact whereabouts of the applicant, but has given an undertaking that no sooner the applicant comes than he will be informed and sent to the Police Station as he is required by Police. Further, it is indicated from the investigation file, particularly, the file of the Municipal Corporation, that the applicant was consulting architect engineer and was required to supervise the construction and he was to ensure that the construction is as per the plans approved. It is an admitted fact that the application for Building Use Permission was also signed by the applicant. This indicates that the applicant, as a qualified architect engineer who had prepared the plan, was supposed to supervise the construction and that is what he has, in fact, done. The building has collapsed in the quake and, therefore, he has been charged with the offence. The complaint is lodged against him in the month of February, 2001 and, till today, he has been able to evade arrest.

6. It was contended that there is nothing to indicate that the building was of inferior quality as the

F.S.L. report is yet not received. The builder-Ramanlal Panchal has been enlarged on bail. These factors may play a role while deciding the application for regular bail. The applicant comes for anticipatory bail. It is clear that he has not taken any steps to co-operate with the investigation. It is not his case that after the statement of his daughter-in-law which was recorded on the 20th February, 2001, he has not gone back to his house. Therefore, he was duty bound to approach the investigating agency and co-operate with the investigation. It is not required for this Court to make any observation about the quality of construction and responsibility or otherwise of the applicant. But considering the fact that the applicant is wanted in connection with an offence and considering that he is not making himself available despite the knowledge that he is required, this Court is not inclined to exercise its judicial discretion in favour of the applicant and grant anticipatory bail. It is only after issuance of Warrant that the applicant has approached Court with prayer for anticipatory bail. At the same time, he has chosen not to challenge the issuance of Warrant under Section 70 of the Code of Criminal Procedure. Judicial discretion is not required to be used in a manner which would obstruct the process of law or help a person to evade the process of law. The provision is required to be used to supplement the process of law. It cannot be permitted to be used as a shield against arrest. No apprehension of any ill-treatment at the hands of the Investigating agency is alleged and, therefore, in light of the decison of the Apex Court in the case of Enforcement Officer, TED, Bombay v. Bher Chand Tikaji Bora & Another, (1999) 5 SCC 720, this application cannot be entertained. The application stands rejected. Rule is discharged.

[A.L. DAVE, J.]

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